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No. 03-5165

In the Supreme Court of the United States

MARCUS THORNTON, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether a police officer may search the passenger compartment of an automobile as a contemporaneous incident of the lawful custodial arrest of the vehicle's recent occupant when the arrestee exited the vehicle voluntarily rather than on police direction.

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OPINIONS BELOW

The opinion of the court of appeals (J.A. 61-75) is reported at 325 F.3d 189. The opinion of the district court (J.A. 30-37) is unreported.

JURISDICTION

The judgment of the court of appeals was entered on April 3, 2003. The petition for a writ of certiorari was filed on July 1, 2003, and was granted on November 3, 2003. The jurisdiction of this Court is invoked nder 28 U.S.C. 1254(1).

CONSTITUTIONAL PROVISION INVOLVED

The Fourth Amendment to the United States Constitution provides in relevant part:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.

STATEMENT

Petitioner was charged with possession of cocaine base with intent to distribute it, in violation of 21 U.S.C. 841(a)(1) (Count 1); possession of a firearm by a convicted felon, in violation of 18 U.S.C. 922(g)(1) (Count 2); and possession of a firearm in furtherance of a drug-trafficking crime, in violation of 18 U.S.C. 924(c)(1) (Count 3). After the district court denied petitioner's motion to suppress evidence, J.A. 30-37, a jury found petitioner guilty on all three counts. Petitioner was sentenced to concurrent terms of 120 months of imprisonment on Counts 1 and 2, and to a consecutive term of 60 months of imprisonment on Count 3, to be followed by eight years of supervised release. The court of appeals affirmed. J.A. 61-75.

1. On July 21, 2001, Police Officer Deion L. Nichols was patrolling Sewells Point Road in Norfolk, Virginia, in an unmarked police car by himself. After he observed petitioner's vehicle—a gold Lincoln Town Car—drive by, he ran a computer check on its tags.[1] The check revealed that the tags had been issued to a 1982 Chevrolet-model vehicle, not a Lincoln Town Car. Officer Nichols pursued the Lincoln with the intent of pulling it over to inquire about the tags. Before Officer Nichols could make a traffic stop, however, petitioner made a turn into a shopping center parking lot, parked his car, and exited it. J.A. 62-63; see J.A. 9-10, 40-42.

[1] When Officer Nichols ran the computer check on petitioner's Lincoln, he believed that it was the same gold car that he had just observed being driven on Sewells Point Road in a suspicious manner. He later became "unsure," however, "whether the gold Lincoln Town Car he managed to get behind was the one that first aroused his suspicion." J.A. 31 n.1; see J.A. 9-10, 12-14.

Officer Nichols pulled in behind the Lincoln and, as he later testified, "got out [of his patrol car] and approached [petitioner] as he exited his vehicle." J.A. 46; see J.A. 42 ("I pulled in right behind him. As [petitioner] exited his vehicle, I also exited my vehicle."). Officer Nichols—who was in uniform—immediately approached petitioner, asked to see his license, and explained that his vehicle did not match the registered vehicle. Petitioner "appeared nervous," and he "right away started rambling," "licking his lips," and "sweating." J.A. 63; see J.A. 42, 47-48. Petitioner told Officer Nichols that "someone had just given him the car." J.A. 63. Officer Nichols asked petitioner if he had any narcotics or weapons on him or in his car and petitioner replied "no." *Ibid.*

Petitioner consented to a pat-down search for weapons. During the pat-down, Officer Nichols detected a bulge in petitioner's front left pocket. J.A. 63. Officer Nichols asked petitioner whether he had any narcotics on him. Petitioner responded that he had "a bag of weed." *Ibid.* Officer Nichols asked petitioner to remove it from his pocket. Petitioner reached into his pocket and produced two bags. One bag contained a green leafy substance consistent with marijuana; the other bag contained a large amount of a white rocklike substance consistent with crack cocaine. Officer Nichols arrested petitioner, handcuffed him and put him in the back of his police car, and searched petitioner's car. The search revealed a loaded semi-automatic pistol under the front driver's seat. *Ibid.*; see J.A. 11, 32, 42-43.

2. Before trial, petitioner moved to suppress the firearm found in his car. In particular, petitioner argued that the warrantless search of his vehicle was not justified as a search incident to arrest under *New York* v. *Belton*, 453 U.S. 454 (1981), because petitioner

had voluntarily exited his vehicle before he was confronted by Officer Nichols, as opposed to having been ordered out of the car. The district court denied petitioner's motion and held that the search of petitioner's vehicle was valid under *Belton*. J.A. 30-37.

After a two-day trial, a jury found petitioner guilty on all counts. Petitioner moved for a new trial pursuant to Fed. R. Crim. P. 33, reiterating his argument that the search of the vehicle was not authorized by *Belton*. The district court denied that motion on the basis of the earlier ruling denying the motion to suppress. J.A. 59.

3. The court of appeals affirmed. J.A. 61-75. Petitioner's "sole contention on appeal" was that the search of his car was unlawful because "the search incident to arrest doctrine, as applied to searches of automobiles in *New York* v. *Belton*, 453 U.S. 454 (1981), required Officer Nichols to 'initiate . . . contact with [petitioner], either by actually confronting [petitioner], or signaling confrontation with [petitioner], while [petitioner] was still in his vehicle." J.A. 65; see also J.A. 68 ("[Petitioner] contends that the *Belton* rule does not govern this case because he was not an 'occupant of an automobile' when Officer Nichols confronted him."). The court of appeals rejected that contention and held that "Officer Nichols lawfully searched [petitioner's] automobile incident to the arrest." J.A. 75.

The court of appeals reasoned that this Court's own decisions "clearly indicate[], albeit in dicta, that an officer may search an automobile incident to an arrest, even if the officer has not initiated contact while the arrestee was still in the automobile." J.A. 71 (citing *Michigan* v. *Long*, 463 U.S. 1032, 1035-1036 & n.1 (1983)). Furthermore, the court stated, "the historical rationales for the search incident to arrest doctrine—'the need to disarm the suspect in order to take him into custody' and 'the need to preserve evidence for later use at trial'—do not permit [a] limitation on the *Belton* rule" based on "whether the arrestee exits the automobile voluntarily or because of confrontation with an officer." J.A. 72. The court determined that "[petitioner]'s proposed limitation of the *Belton* rule would raise serious safety concerns for law enforcement personnel" by "requir[ing] officers to actually confront or signal confrontation with an arrestee while the arrestee is in the automobile." *Ibid.*

The court of appeals also reasoned that "[t]he conceded close proximity, both temporally and spatially, of [petitioner] and his car at the time of his arrest provides adequate assurance that application of the *Belton* rule to cases like this one does not render that rule limitless." J.A. 74. As the court explained, "[petitioner] concedes that he was in close proximity to his vehicle when Officer Nichols approached him," and the record "conclusively show[s] that Officer Nichols observed [petitioner] park and exit his automobile and then approached [petitioner] *within moments*." J.A. 73-74 (emphasis in original). Accordingly, the court found, "'no doubt exists that the car was within [petitioner's] immediate control at the beginning of his encounter with' Officer Nichols." J.A. 74.[2]

SUMMARY OF ARGUMENT

The court of appeals correctly held that the search of petitioner's vehicle was lawful under the Fourth Amendment as an incident to his custodial arrest, even

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[2] Because the court of appeals held that the search of petitioner's vehicle was valid under *Belton*, it did not "reach the district court's alternative holding that Officer Nichols could have conducted a lawful inventory search." J.A. 75; see J.A. 35-36.

though petitioner got out of his car voluntarily rather than on police direction.

A. It is well-established that, when law enforcement personnel lawfully arrest an individual, they may search the arrestee's person and the immediately surrounding area without obtaining a warrant. *Chimel* v. *California*, 395 U.S. 752 (1969); *Weeks* v. *United States*, 232 U.S. 383 (1914). In *New York* v. *Belton*, 453 U.S. 454, 460 (1981), this Court adopted a bright-line rule to guide police officers in the commonly recurring and highly dangerous situation in which the "recent occupant" of an automobile is arrested: an officer may search the passenger compartment of the vehicle that the arrestee has just occupied as a contemporaneous incident of the arrest. *Belton*'s bright-line rule applies whenever such an arrest takes place, whether or not the police initiate contact with an arrestee while he is still inside the vehicle.

B. Petitioner's proposed initiation-of-contact rule has no foundation either in this Court's decision in *Belton* or the rationales underlying *Belton*. By its terms, the *Belton* rule applies to the arrest of the "recent occupant" of a vehicle. 453 U.S. at 460. Indeed, the vast majority of *Belton* searches—including the search in *Belton* itself—are not conducted until after an arrestee has exited a car. The *Belton* rule is grounded on the rationales of the search-incident-to-arrest doctrine —the need to protect officer safety and to preserve evidence of a crime. Those rationales are implicated "whenever officers effect a custodial arrest" of the recent occupant of a vehicle, *Michigan* v. *Long*, 463 U.S. 1032, 1049 n.14 (1983), regardless of whether the arrestee exited the vehicle voluntarily or on police direction.

A holding that *Belton* does not apply unless police confront arrestees while they are still *inside* a vehicle would be likely to compromise police safety by increasing the volatility and thus the hazards of *Belton* encounters. Such a limitation would create an incentive for suspects to jump out of cars before police initiate contact with them and, at the same time, encourage police to rush contact with suspects before they can exit a car, creating a potentially explosive dynamic in what this Court has already recognized is an "especially hazardous" situation for police. *Long*, 463 U.S. at 1049. Similarly, an initiation-of-contact rule could interfere with surveillance activities and other situations in which police do not wish to announce their presence until a suspect exits his car.

C. *Belton*'s built-in limitations are straightforward and workable, and far superior to an arbitrary initiation-of-contact rule. First, *Belton* applies only in the case of the lawful custodial arrest of a vehicle's "recent occupant" (453 U.S. at 460); and, second, *Belton* authorizes only those searches that are conducted as a "contemporaneous incident" (*ibid.*) to such an arrest. Those criteria afford police needed flexibility to make judgments about the applicability of *Belton* in the context of unfolding encounters, and may be routinely applied in the vast majority of *Belton* situations. Whatever debate there may be about the outer margins of *Belton*'s rule, it does not justify depriving police of the clarity and protection of *Belton* in cases, such as this one, where an officer sees an individual exit a vehicle and confronts him moments later.

Nor is there any basis for adopting petitioner's alternative theory that *Belton* should be limited based on an after-the-fact, case-by-case examination of whether a suspect was within "reaching distance" of a car at the

moment of his arrest. Not only has that argument been waived, but it is unsound: subjecting *Belton* to a post hoc, fact-intensive inquiry into whether a recent occupant was within "reaching distance" of the car at the time of his arrest would eviscerate *Belton*'s bright-line rule, and would require police to attempt to make murky and impractical determinations that would complicate administration of the *Belton* rule.

D. The search of petitioner's vehicle was valid under *Belton*. First, petitioner was a "recent occupant" of his car when he was subjected to a lawful custodial arrest. As the court of appeals found, the record "conclusively" establishes that Officer Nichols saw petitioner park and exit the vehicle and met him "*within moments*." J.A. 74 (emphasis in original). Second, the search of petitioner's car was conducted as a "contemporaneous incident" of his arrest. Officer Nichols arrested petitioner, put him in his patrol car, and searched his vehicle as part of one continuous event. *Ibid.* Accordingly, under the Fourth Amendment, the challenged search was a reasonable and, thus, lawful intrusion. The judgment of the court of appeals should be affirmed.

ARGUMENT

THE SEARCH OF PETITIONER'S AUTOMOBILE WAS A LAWFUL INCIDENT TO HIS ARREST

In *New York* v. *Belton*, 453 U.S. 454 (1981), this Court established a bright-line rule to guide the officer in the field in the dangerous and recurring context of the arrest of someone who has just occupied a vehicle. The Court held that police may search the passenger compartment of a vehicle whenever an "arrestee is its recent occupant." *Id.* at 460. This case presents the question whether the *Belton* rule "is confined to situations in which the police initiate contact with the occupant of a vehicle while that person is in the vehicle." Pet. i. Petitioner's "sole contention on appeal" was that the search of his vehicle was not lawful under *Belton*, because Officer Nichols did not initiate contact with him "while [he] was still in his vehicle." J.A. 64-65. As explained below, the court of appeals correctly rejected that contention and held that the search of petitioner's vehicle was lawful.[3]

A. Under *New York* v. *Belton*, Police Officers May Search The Passenger Compartment Of A Car Incident To The Lawful Custodial Arrest Of Any "Recent Occupant" Of The Vehicle

1. The Fourth Amendment to the Constitution guarantees that "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated," and further provides that "no Warrants shall issue, but upon probable cause." U.S. Const. Amend. IV. This

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[3] In two recent cases in which the United States participated as an amicus, this Court has granted certiorari to address the same question. See *Florida* v. *Thomas*, 532 U.S. 774, 776 (2001) ("We granted certiorari to consider whether [the *Belton*] rule is limited to situations in which the officer initiates contact with the occupant of a vehicle while that person remains inside the vehicle."); Pet. i, *Arizona* v. *Gant*, 123 S. Ct. 1784 (2003) (No. 02-1019) ("When police arrest the recent occupant of a vehicle outside the vehicle, are they precluded from searching the vehicle pursuant to *New York* v. *Belton* unless the arrestee was actually or constructively aware of the police before getting out of the vehicle?"). In *Thomas*, however, the Court concluded that it lacked jurisdiction because the state court judgment on review in that case was not final, and the Court dismissed the writ of certiorari for want of jurisdiction. 532 U.S. at 776, 781. And, in *Gant*, the Court issued an order before argument vacating and remanding the case in light of an intervening decision of the Arizona Supreme Court. See 124 S. Ct. 461 (2003).

Court has long recognized that when there has been a lawful arrest, a search of the person of the arrestee and the area within his control "is not only an exception to the warrant requirement of the Fourth Amendment, but is also a 'reasonable' search under that Amendment." *United States* v. *Robinson*, 414 U.S. 218, 235 (1973); see *Weeks* v. *United States*, 232 U.S. 383, 392 (1914). There are two longstanding rationales for the search-incident-to-arrest doctrine: the need "to remove any weapons that the [arrestee] might seek to use in order to resist arrest or effect his escape," and the need to prevent the "concealment or destruction" of evidence. *Chimel* v. *California*, 395 U.S. 752, 763 (1969); see *Knowles* v. *Iowa*, 525 U.S. 113, 116-117 (1998).

As this Court has recognized, the custodial arrest is a highly volatile and dangerous event. See *Knowles*, 525 U.S. at 117; *Robinson*, 414 U.S. at 234-235 & n.5. Between 1992 and 2001, for example, 221 of the 643 law enforcement officers who were feloniously killed in the line of duty were slain in arrest situations, making the arrest by far the most dangerous situation that officers routinely confronted during that period. FBI, U.S. Dep't of Justice, *Uniform Crime Reports: Law Enforcement Officers Killed and Assaulted* 33 (2001) (*Uniform Crime Reports*). In 2001, 24 of the 142 law enforcement officers killed in the line of duty were engaged in arrest situations when they were mortally wounded, and in that same year officers were assaulted while attempting arrests on 9107 occasions. *Id.* at 32, 93; see also FBI, U.S. Dep't of Justice, *Killed in the Line of Duty: A Study of Selected Felonious Killings of Law Enforcement Officers* 3 (Sept. 1992).[4] In

[4] Drug-related arrests, like the arrest in this case, pose a particularly great risk to police officers. In 2001, for example, eight of the 24 officers who were slain in arrest situations were investigating drug-related matters. *Uniform Crime Reports* 32; see *id.* at 33 (between 1992 and 2001, 38 of the 221 officers feloniously killed in arrest situations were investigating drug-related matters).

addition to the heightened threat to officer safety, the moment that an individual is placed under formal arrest, he has an increased motive "to take conspicuous, immediate steps to destroy incriminating evidence." *Cupp* v. *Murphy*, 412 U.S. 291, 296 (1973).

Accordingly, this Court has recognized that, "[w]hen an arrest is made, it is reasonable for the arresting officer to search the person arrested in order to remove any weapons that the latter might seek to use in order to resist arrest or effect his escape," and "to search for and seize any evidence on the arrestee's person in order to prevent its concealment or destruction." *Chimel*, 395 U.S. at 762-763. Further, the officer's need to protect himself and to preserve evidence justifies a search of the area within the arrestee's "immediate control," which the Court has defined as "the area from within which [the arrestee] might gain possession of a weapon or destructible evidence." *Id.* at 763. Because "potential dangers lurk[] in all custodial arrests," *United States* v. *Chadwick*, 433 U.S. 1, 14-15 (1977), the validity of a search incident to arrest "does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found." *Robinson*, 414 U.S. at 235. Rather, "[i]t is *the fact of the lawful arrest* which establishes the authority to search." *Ibid.* (emphasis added).

2. In *New York* v. *Belton*, *supra*, this Court applied those principles and defined the permissible scope of a search incident to the custodial arrest of someone who has just occupied an automobile. *Belton* arose when a

state trooper stopped a car for speeding and arrested the occupants of the vehicle for possession of marijuana. The officer ordered the occupants out of the car and placed them under arrest. See 453 U.S. at 455-456. After "patt[ing] down" the arrestees and separating them, the officer searched the passenger compartment of the car and discovered cocaine. See *id.* at 456. The state courts suppressed the evidence found during the search on the ground that, when the search took place, "there [was] no longer any danger that the arrestee or a confederate might gain access to the article." *Ibid.* This Court reversed.

The Court began its Fourth Amendment analysis with the principle that "a lawful custodial arrest creates a situation which justifies the contemporaneous search without a warrant of the person arrested and of the immediately surrounding area." *Belton*, 453 U.S. at 457. The Court then explained that courts had struggled in applying the search-incident-to-arrest doctrine to the recurring question presented in *Belton*, namely, "whether, in the course of a search incident to the lawful custodial arrest of the occupants of an automobile, police may search inside the automobile *after the arrestees are no longer in it.*" *Id.* at 459 (emphasis added). As the Court recognized, the lower courts were in "disarray" on that issue and had "found no workable definition of 'the area within the immediate control of the arrestee' when that area arguably includes the interior of an automobile and the arrestee is its recent occupant." *Id.* at 459 n.1, 460.

The Court stated that "[a] single familiar standard is essential to guide police officers, who have only limited time and expertise to reflect on and balance the social and individual interests involved in the specific circumstances they confront." *Belton*, 453 U.S. at 458. "[T]o

establish the workable rule [that] this category of cases requires," the Court adopted "the generalization that articles inside the relatively narrow compass of the passenger compartment of an automobile are in fact generally, even if not inevitably, within 'the area into which an arrestee might reach in order to grab a weapon or evidentiary ite[m].'" *Id.* at 460 (quoting *Chimel*, 395 U.S. at 763). Based on that generalization, the Court held that "when a policeman has made a lawful custodial arrest of the occupant of an automobile, he may, as a contemporaneous incident of that arrest, search the passenger compartment of that automobile." *Ibid.* (footnotes omitted).

In *Belton*, the Court emphasized that this rule, "while based upon the need to disarm and to discover evidence, does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found." 453 U.S. at 461 (quoting *Robinson*, 414 U.S. at 235). If the arrest is lawful, then the "search [of the vehicle] incident to the arrest requires no additional justification." *Ibid.* (same). In subsequent cases, this Court has specifically recognized the "bright-line" nature of *Belton*'s search-incident-to-arrest rule. *Florida* v. *Thomas*, 532 U.S. 774, 776 (2001); see also *Michigan* v. *Long*, 463 U.S. 1032, 1049 n.14 (1983).[5]

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[5] As Justice Powell explained in his opinion concurring in the judgment of *Robbins* v. *California*, 453 U.S. 420 (1981), which was decided the same day as *Belton*, the *Belton* rule is also supported by the diminished expectation of privacy that an individual has in the circumstances giving rise to its application:

> *Belton* trades marginal privacy of containers within the passenger area of an automobile for protection of the officer and of destructible evidence. The balance of these interests strongly favors the Court's rule. The occupants of an automobile enjoy

3. *Belton* explicitly applies to an individual, like petitioner, who has already exited a car before he is arrested—*i.e.*, not just to the occupant but to the "recent occupant" of a car. 453 U.S. at 460. The facts of *Belton* underscore the point: Roger Belton and his companions had exited their vehicle before they were arrested and the vehicle was searched. See *id.* at 462-463 ("The jacket was located inside the passenger compartment of the car in which [Belton] had been a passenger just before he was arrested"); see also 3 Wayne R. LaFave, *Search and Seizure* § 7.1(b) at 437 & n.26 (3d ed. 1996 & Supp. 2004) (LaFave) ("*Belton* applies whenever the person arrested was * * * the driver of or a passenger in the vehicle *just before* the arrest.") (emphasis added; collecting cases).

Petitioner argues (Br. 19) that the *Belton* Court's use of the term "recent occupant" was "a lone passing reference." See also *id.* at 8. But the Court's reference to "recent occupant[s]" was consistent with its description of the category of cases that gave rise to *Belton*, *i.e.*, cases in which police "search inside the automobile *after the arrestees are no longer in it*," 453 U.S. at 459 (emphasis added), as well as, as noted with the facts in *Belton*. Furthermore, Justice Brennan's dissenting opinion highlighted the significance of the Court's reference to "recent occupants." See *id.* at 463 ("The

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only a limited expectation of privacy in the interior of the automobile itself. This limited interest is diminished further when the occupants are placed under custodial arrest.

Id. at 431 (citations omitted). Cf. *United States* v. *Edwards*, 415 U.S. 800, 808-809 (1974) ("While the legal arrest of a person should not destroy the privacy of his premises, it does—for at least a reasonable time and to a reasonable extent—take his own privacy out of the realm of protection from police interest in weapons, means of escape, and evidence.").

Court today turns its back on the product of [the *Chimel*] analysis, formulating an arbitrary 'bright-line' rule applicable to *'recent' occupants* of automobiles that fails to reflect *Chimel*'s underlying policy justifications.") (emphasis added); see *id.* at 466 (The Court "adopts a fiction—that the interior of a car is *always* within the immediate control of the arrestee who has *recently* been in the car.") (second emphasis added); *id.* at 466-467 (emphasizing that Belton and his companions were not arrested until "*after* they had been removed from the car") (emphasis in original).

The application of *Belton* to "recent occupants" is the only rule that makes sense from the standpoint of officers in the field. The vast majority of arrests that take place in the *Belton* context occur "after the arrestees are no longer in [the car]." *Belton*, 453 U.S. at 459. That is a common-sense practice. Police officers face an "inordinate risk" when "approach[ing] a person seated in an automobile" and, as a result, often order occupants out of the car when conducting an investigation that may lead to an arrest. *Pennsylvania* v. *Mimms*, 434 U.S. 106, 110 (1977) (per curiam) (officer may, without particularized justification, order a driver out of the car after stopping vehicle); see *Maryland* v. *Wilson*, 519 U.S. 408, 414 (1997) (rule of *Mimms* extends to passengers). It is invariably safer and more efficient for an officer to search the vehicle while an arrestee is outside it. See LaFave § 7.1(a) at 435 n.15 ("fairly standard practice" is to remove an arrestee before searching the vehicle he occupied).

Given that *Belton* explicitly applies to individuals who are not arrested until *after* they have exited the car, petitioner's reliance (Br. 15, 31) on *Vale* v. *Louisiana*, 399 U.S. 30 (1970), is misplaced. In *Vale*, the Court stated that, under *Chimel*, "[i]f a search of a

house is to be upheld as incident to an arrest, that arrest must take place *inside* the house, not somewhere outside." *Id.* at 33-34 (citation omitted; emphasis in original). This Court, however, has never extended that principle to the unique and different automobile context of *Belton* and, if it did, little if anything would be left of *Belton*'s search-incident-to-arrest rule. As discussed, in the vast majority of instances in which the *Belton* rule has been applied—including in *Belton* itself—the individual is *outside* the car when he is arrested.

Both doctrinal and practical considerations support the conclusion that the reasoning of *Vale* does not apply to *Belton*. As a doctrinal matter, the fact that *Belton* is not limited to arrests that take place while an individual is still inside the vehicle is consistent with the unique considerations that the Court dealt with in *Belton* in attempting to establish a "workable rule" for the "particular and problematic context" present in *Belton*. 453 U.S. at 460 & n.3. Moreover, as a practical matter, in the typical case it is likely to be easier for an arrestee to lunge for a weapon or evidence in "the relatively narrow compass of the passenger compartment of an *automobile*" he has just occupied, *id.* at 460 (emphasis added), than it may be to retrieve a weapon or evidence hidden somewhere inside the comparatively spacious areas of a *house* he has just occupied.

B. *Belton*'s Bright-Line Rule Applies Without Regard To Whether An Arrestee Initially Exited His Vehicle Voluntarily Or At The Direction Of Police

The court of appeals rejected petitioner's argument that "*Belton*'s 'bright line' rule 'is limited to situations in which the officer initiates contact with the occupant of a vehicle while that person remains inside the

vehicle.'" J.A. 70 (quoting *Thomas*, 532 U.S. at 776). For several reasons, that conclusion is correct.

1. *The Custodial Arrest, And Not The Initiation Of Police Contact, Triggers The* Belton *Rule*

Belton, along with the search-incident-to-arrest cases on which the Court relied in *Belton*, makes clear that the custodial arrest gives rise to the authority to search. See *Belton*, 453 U.S. at 461 ("A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification."). See also, *e.g.*, *United States* v. *Edwards*, 415 U.S. 800, 802-803 (1974); *Chimel*, 395 U.S. at 762-763; *Preston* v. *United States*, 376 U.S. 364, 367 (1964). As explained in Part A, *supra*, that conclusion follows from the potential dangers inherent in every custodial arrest. Those dangers arise as soon as a recent occupant of a vehicle is placed under arrest—regardless of whether the individual initially got out of the vehicle voluntarily or at the direction of police.

This Court's decision in *Michigan* v. *Long*, *supra*, illustrates that the application of *Belton* turns on the arrest of an individual who has recently occupied a car, and not whether police initiate contact with an individual while he is inside a car. In *Long*, police officers saw a car swerve into a ditch. When they stopped to investigate, the driver of the car, "the only occupant of the automobile, met the deputies at the rear of the car." 463 U.S. at 1035. The officers issued the driver a ticket, but did not arrest him. The question in *Long* was whether the officers conducted a lawful *Terry*-type search of the passenger compartment of the car. At the outset, however, the Court observed that "[i]t is clear * * * that if the officers had arrested [the driver],"

instead of simply issuing him a ticket, "they could have searched the passenger compartment" under *Belton*. *Id.* at 1035 n.1. As the Court explained, "*Belton* clearly authorizes [an automobile] search *whenever* officers effect a custodial arrest." *Id.* at 1049 n.14 (emphasis added). That was true in *Long* even though the police did not pull Long's car over, order him out of the car, or approach him until *after* he had exited his car.

Knowles v. *Iowa*, 525 U.S. 113 (1998), reinforces the conclusion that the arrest is the pivotal event under *Belton*. In that case, the Court held that a police officer may not conduct a warrantless search of a vehicle incident to a traffic citation. The Court explained that "[t]he threat to officer safety from issuing a traffic citation * * * is a good deal less than in the case of a custodial arrest," and that "the concern for destruction or loss of evidence is not present at all" in the case of a citation. *Id.* at 117, 119. At the same time, however, the Court reaffirmed—specifically pointing to *Belton*—that where, as here, there *is* a "custodial arrest," police officers may "conduct a full search of the passenger compartment" of a car in order "to search for weapons and protect themselves from danger." *Id.* at 117, 118 (citing *Belton*, 453 U.S. at 460). Unlike the defendant in *Knowles*, petitioner was subjected to a custodial arrest.

2. *An Initiation-Of-Contact Limitation Has No Support In The Rationales Underlying The Search-Incident-To-Arrest Doctrine*

A rule limiting the application of *Belton* to situations in which the officer initiates contact with the occupant of a vehicle while he remains inside the vehicle is not supported by either of the "historical rationales for the search incident to arrest doctrine." J.A. 72. The likelihood an arrestee will lunge for a weapon contained

in a vehicle that he has recently occupied does not fluctuate based on the reason that he exited the vehicle. "The danger to the police officer *flows from the fact of the arrest*, and its attendant proximity, stress, and uncertainty." *Robinson*, 414 U.S. at 234 n.5 (emphasis added); see *Washington* v. *Chrisman*, 455 U.S. 1, 7 (1982) ("Every arrest must be presumed to present a risk of danger to the arresting officer."). Thus, regardless of whether an individual exits his vehicle voluntarily or on police direction, "the 'bright line' that [this Court] drew in *Belton* clearly authorizes [a search of the car] *whenever* officers effect a custodial arrest." *Long*, 463 U.S. at 1049 n.14 (emphasis added).

So too, the moment that a suspect is placed under arrest, he has an increased motive to conceal or destroy incriminating evidence. See *Belton*, 453 U.S. at 457; *Chimel*, 395 U.S. at 763; see also LaFave § 5.2(c) at 78. The likelihood that an arrestee will attempt to destroy evidence in a car—and the officer's interest in preventing such efforts—does not vary based on whether an arrestee got out of his car of his own volition or upon an officer's bidding. And, as this Court has stated, the need to preserve the integrity of such evidence following the arrest "justifies an 'automatic' search" under *Belton*. *Long*, 463 U.S. at 1049 n.14; see also *Glasco* v. *Commonwealth*, 513 S.E.2d 137, 142 (Va. 1999) ("[A] knowledgeable suspect has the same motive and opportunity to destroy evidence or obtain a weapon as the arrestee with whom a police officer has initiated contact.").

In *State* v. *Dean*, 76 P.3d 429 (2003), the Arizona Supreme Court recently explained the analytical flaws in limiting *Belton* based on whether the police initiate contact with an arrestee before, or after, he exits the car. The court stated:

> The analytical approach * * * under which the applicability of the *Belton* rule turns entirely on whether the police initiated contact with the arrestee while he was still in the vehicle * * * is not supported by the rationale of either *Belton* or *Chimel*. The search incident to arrest exception explicated in *Belton* and *Chimel* was designed to protect officer safety and avoid the destruction of evidence. A suspect arrested next to a vehicle presents the same threat to officer safety and the same potential for destruction of evidence whether or not he was alerted prior to arrest of the police's interest in him. * * * It makes no sense to have two different rules applicable to arrests occurring in what is for all relevant intents and purposes the same situation.

Id. at 436.

This case—which has all the hallmarks of a classic *Belton* encounter—illustrates the arbitrariness of petitioner's initiation-of-contact rule. Officer Nichols first observed petitioner while he was driving his car along Sewells Point Road, and intended to conduct a traffic stop of petitioner's car after he determined that it did not match the description of the registered vehicle. J.A. 62. Petitioner parked and got out of his car before Officer Nichols was able to initiate contact with him, but Officer Nichols met petitioner "*within moments*" after he exited his vehicle, in essentially the same vicinity of the car that petitioner might have occupied if he had been ordered out of the car. The fact that petitioner exited the car voluntarily, rather than on police direction, was immaterial to the encounter that followed. Likewise, the justification for searching petitioner's car pursuant to *Belton* did not materialize until

Officer Nichols had developed probable cause and placed petitioner under custodial arrest.

The rationales underlying *Belton* are squarely implicated by this case. When he was met by Officer Nichols moments after he exited his car, petitioner acted "very nervous and jittery." J.A. 42. Petitioner's behavior caused Officer Nichols to be concerned for his safety and request consent to conduct a pat-down search. After the pat-down search, Officer Nichols had even more cause for concern—petitioner had both marijuana and crack cocaine on his person. *Ibid.* At the moment he placed petitioner under custodial arrest, the situation became even more volatile and potentially dangerous for Officer Nichols—who was on duty by himself—given the unique risks inherent in every custodial arrest, not to mention a drug-related arrest like petitioner's. See p. 11 & note 4, *supra*. A search of petitioner's vehicle revealed a loaded semiautomatic gun under the front seat of petitioner's car—which, as the court of appeals stated, was "'within [petitioner's] immediate control at the beginning of his encounter with' Officer Nichols." J.A. 74.

The fact that petitioner exited the vehicle voluntarily, rather than on police direction, in no way altered the risks that Officer Nichols faced when he met petitioner immediately after he exited his car. Nor did that fact in any way diminish petitioner's incentive to attempt to get back into the car to seize or try to conceal his gun once he was arrested.

3. *An Initiation-Of-Contact Limitation Would Needlessly Complicate* Belton*'s Bright-Line Rule*

Petitioner's initiation-of-contact rule also would needlessly blur the bright line established by *Belton*. In *Belton*, the Court emphasized the need to provide

police officers with a clear, easily administered rule for the dangerous and recurring situation involving the arrest of the recent occupant of a vehicle. 453 U.S. at 458. As the Court elaborated in *Belton*, "[a] highly sophisticated set of rules, qualified by all sorts of ifs, ands, and buts and requiring the drawing of subtle nuances and hairline distinctions, may be the sort of heady stuff upon which the facile minds of lawyers and judges eagerly feed, but they may be 'literally impossible of application by the officer in the field.'" *Ibid.* Subjecting *Belton* to a case-by-case determination whether an individual exited a vehicle voluntarily or on police direction would introduce the sort of "subtle nuances and hairline distinctions" that *Belton* sought to foreclose.

Although petitioner attempts to downplay the line-drawing inherent in an initiation-of-contact limitation on *Belton*, such a rule could require law enforcement personnel to make a variety of ad hoc determinations—subject to second-guessing by a court—in the limited time that they have to assess the situation after arresting the recent occupant of a vehicle. *Belton*, 453 U.S. at 458. For example, in deciding whether a *Belton* search is authorized, an officer might have to ascertain (1) whether the arrestee was aware of the police when he got out of the car, a determination that may depend on whether the police are in uniform or a marked squad car, police lights or sirens have been activated, or the arrestee was impaired in a manner that could have affected his awareness of the police; (2) whether, if the arrestee *appeared* to get out of the car voluntarily, the arrestee nevertheless did so to avoid the application of *Belton*; and (3) whether an officer sufficiently "signal[ed] confrontation" (J.A. 65) with an arrestee while he was in the car, such that the arrestee got out

of the car because of the officer's contact as opposed to another reason.

The subjective nature and potential complexity of that determination is illustrated by the facts of the *Gant* case, which this Court vacated and remanded last fall in light of an intervening decision of the Arizona Supreme Court rejecting an initiation-of-contact limitation on *Belton*. *State* v. *Gant*, 43 P.3d 188 (Ariz. Ct. App. 2002), vacated and remanded, 124 S. Ct. 461 (2003), and superseded by *State* v. *Dean*, 79 P.3d 429 (Ariz. 2003). In *Gant*, the police "shin[ed] a flashlight into Gant's vehicle" as they approached the car, but the Arizona court of appeals nonetheless concluded that the record failed to show "that the police attempted to initiate contact with Gant while he was still in his vehicle or that he had attempted to evade contact with the police by exiting his vehicle." 43 P.3d at 245; see *ibid.* ("[W]e do not believe that, by shining a flashlight into Gant's vehicle, the officer necessarily initiated contact with him"; discussing other variables complicating the determination whether *Belton* applied under the court of appeals's initiation-of-contact approach).[6]

In addition, because an initiation-of-contact limitation creates an incentive for suspects to abandon their vehicles before a police officer may initiate contact with them, courts that have adopted that limitation have had

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[6] Petitioner claims (Br. 29) that "there is no subjective component of the contact initiation rule, either as to the officer's or the occupant's intent." But the case law in jurisdictions that have adopted that rule refutes that contention. In *Gant*, for example, the state court of appeals emphasized that "the record does not support a finding that Gant was or should have been aware of anyone's approach as he exited his vehicle," and further stated that it was "unfortunate that the record" did not contain the "witnesses' [own] testimony." 43 P.3d at 245.

to make an exception—which petitioner himself appears to endorse (Br. 35)—that further complicates the application of *Belton*. As the Arizona court of appeals stated in *Gant*: "[W]e emphasize that, when police attempt to initiate contact by either confronting or signaling confrontation, a vehicle's occupant cannot avoid *Belton*'s application by exiting the vehicle when officers are seen or approach." 43 P.3d at 192-193; see also *Thomas* v. *State*, 761 So. 2d 1010, 1013-1014 (Fla. 1999) ("We must caution, however, that * * * [t]he occupants of a vehicle cannot avoid the consequences of *Belton* merely by stepping outside of the vehicle as the officers approach."), cert. dismissed, 532 U.S. 774 (2001). The officer in the field has enough on his mind in the typical *Belton* encounter without having to engage in a case-by-case inquiry into the particular *reason* that a suspect exited his vehicle.

4. *An Initiation-Of-Contact Limitation Is Likely To Compromise Police Safety And Surveillance Activities*

As the court of appeals concluded, limiting *Belton* to situations in which police initiate contact with a suspect while he is still inside a vehicle "would raise serious safety concerns for law enforcement personnel" (J.A. 72) by increasing the risks inherent in an already highly volatile encounter, in direct contravention of *Belton*'s officer-safety rationale. As the court of appeals observed, "when encountering a dangerous suspect, it may often be much safer for officers to wait until the suspect has exited a vehicle before signaling their presence, thereby depriving the suspect of any weapons he may have in his vehicle, the protective cover of the vehicle, and the possibility of using the vehicle itself as either a weapon or a means of flight." *Ibid.*

Moreover, as the court of appeals also recognized, adopting an initiation-of-contact limitation on *Belton* creates an incentive for *suspects* to jump out of their vehicles before they are ordered to do so by police in an attempt to render their vehicles "search proof" under *Belton*. J.A. 73; see *Glasco*, 513 S.E.2d at 142. At the same time, an initiation-of-contact limitation also could lead *the police* to rush a confrontation with vehicle occupants, in order to ensure that *Belton* will apply in the event that the occupants are arrested. See *State* v. *Wanzek*, 598 N.W.2d 811, 815 (N.D. 1999) ("Police officers should not have to race from their vehicles to the arrestee's vehicle to prevent the arrestee from getting out of the vehicle in order to conduct a valid search."). Either dynamic would paradoxically create a more volatile, and thus less safe, world for officers than the one that existed before *Belton*.

Furthermore, as the court of appeals recognized, in many situations, including undercover operations, it may be undesirable or infeasible for police to announce their presence and initiate contact with an individual before the individual gets out of a vehicle. See J.A. 72 ("[W]e can certainly imagine the hesitancy of an officer to activate his lights and sirens if the officer encounters the arrestee while conducting undercover surveillance in an area."); cf. *Shipley* v. *California*, 395 U.S. 818, 819 (1969) (per curiam). That may be particularly true where police are on the lookout for a particular suspect, whose identity may not be known or discernable until the suspect exits a vehicle, see, *e.g.*, *United States* v. *Snook*, 88 F.3d 605, 606 (8th Cir. 1996), or where police do not develop suspicion to investigate until an individual gets out of a vehicle, such as where officers observe an individual get out of a car brandishing a firearm or carrying contraband.

The typical *Belton* encounter is an "especially hazardous" event for police. *Long*, 463 U.S. at 1049. As the court of appeals observed, "[m]andating that officers alert a suspect to their presence before he sheds the protective confines of his vehicle would force officers to choose between forfeiting the opportunity to preserve evidence for later use at trial and increasing the risk to their own lives and the lives of others." J.A. 72. Nor has petitioner supplied any reason for the Court to subject police officers to that dilemma in order to ensure that *Belton* will apply if the recent occupant of a car is arrested.

C. *Belton*'s Built-In Limitations Are Straightforward And Workable And Are Far Superior To The Arbitrary Initiation-Of-Contact Rule Advanced By Petitioner

Although petitioner's initiation-of-contact limitation has no footing either in *Belton* or its rationales, petitioner suggests (Br. 21) that the adoption of such a limitation is nevertheless necessary in order to ensure that the *Belton* rule is workable and has a "logical stopping point." See also *id.* at 9-11, 24-25. That contention is also without merit.

1. *An Initiation-Of-Contact Rule Is Not Necessary To Confine* Belton *To Its Natural Reach*

Belton has built-in limitations that have proven to be clear, workable, and sound in the mine run of cases.

a. First, *Belton* applies only when the arrestee is the vehicle's "recent occupant." 453 U.S. at 460. In most cases in which the question presented has arisen—including this one—there is no reasonable doubt that the arrestee is a recent occupant because the police see the individual exit the vehicle and confront him moments later in essentially the same vicinity that the suspect might have occupied if he had been ordered out

of the car. See J.A. 73-74; *Thomas*, 532 U.S. at 777 (police officer met suspect alongside vehicle right after officer saw him exit the car); *United States* v. *Snook*, 88 F.3d 605, 606 (8th Cir. 1996) (as officer arrived on the scene, "he immediately saw [the defendant], who was just stepping out of his vehicle," and confronted him); *United States* v. *Willis*, 37 F.3d 313, 317 (7th Cir. 1994) (officer saw arrestee sitting in vehicle and then squatting at rear of car and arrested him alongside vehicle); *Gant*, 43 P.3d at 190 ("as the officer was walking toward the vehicle, Mr. Gant got out of the vehicle and started walking toward the officer when the officer called him by name" and met him); *Glasco*, 513 S.E.2d at 435-436 (police officer saw suspect park car and get out and met him moments later); *State* v. *Wanzek*, 598 N.W.2d at 815-816 (suspect exited car immediately before arrest and met officer at rear of vehicle); *People* v. *Bosnak*, 633 N.E.2d 1322, 1326-1327 (Ill. App. Ct. 1994) (officer witnessed suspect driving erratically, saw him exit car, and confronted him moments later); see also *Long*, 463 U.S. at 1035-1036, discussed at pp. 17-18, *supra*.

Whether a suspect exits his vehicle voluntarily or on police direction, there does come a point at which the suspect can no longer be reasonably regarded as a "recent occupant" of the vehicle—*i.e.*, because of the time that has elapsed or distance that he has covered since he exited his car. Although most courts have had little difficulty in concluding that *Belton* does not apply when a suspect has moved hundreds of feet from a car or has not occupied a car for a significant period of time before he was arrested, courts have reached somewhat differing results in closer cases.[7] But the fact that

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[7] See, *e.g.*, *United States* v. *Edwards*, 242 F.3d 928, 938 (10th Cir. 2001) (*Belton* does not apply where defendant "was not ar-

lower courts have reached differing results in a minority of cases in applying *Belton* to individuals who have exited a vehicle provides no reason for arbitrarily limiting *Belton* to "recent occupants" who were *ordered* out of their car by police before they were arrested.

Moreover, if this Court affirms the court of appeals's judgment in this case, it will remove any doubt as to the application of *Belton* to the most common and therefore most important situation in which the question presented has arisen—*i.e.*, where the police see the arrestee exit the vehicle and confront him moments later. See *Wyoming* v. *Houghton*, 526 U.S. 295, 305 (1999) ("[T]he balancing of [Fourth Amendment] interests must be conducted with an eye to the generality of cases."); see also *United States* v. *Alvarez-Sanchez*, 511 U.S. 350, 359-360 (1994); *Albright* v. *Oliver*, 510 U.S. 266, 291 (1994) (Souter, J., concurring in judgment). As the court of appeals explained, "[t]he conceded close proximity, both temporally and spatially, of [petitioner] and his car at the time of his arrest provides adequate assurance that application of the *Belton* rule to cases like this one does not render that rule limitless." J.A. 74; see Part D, *infra*. Recognizing that *Belton* applies in such circumstances therefore will not expand *Belton* in the limitless fashion asserted by petitioner.

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rested in or near the car, but 100-150 feet away from the car"); *United States* v. *Strahan*, 984 F.2d 155, 159 (6th Cir. 1993) (*Belton* does not apply where arrestee was "approximately thirty feet from his vehicle when arrested"); *Dean*, 76 P.3d at 437 (arrestee was not "recent occupant" under *Belton* where "[h]e had not occupied the vehicle for some two and one-half hours," and was found hiding in the attic of a nearby house); *State* v. *Porter*, 6 P.3d 1245, 1249 (Wash. Ct. App. 2000) (*Belton* does not apply where individual was arrested 300 feet from vehicle).

Police officers routinely are required to make common sense judgments based on their past experiences and knowledge in the limited time that they have to evaluate a set of unfolding circumstances in the field. See *Belton*, 453 U.S. at 458-459. A decision by this Court in this case recognizing that an arrestee is a recent occupant for purposes of *Belton* where, as here, the police see the individual exit a vehicle and confront him moments later not only would be fully consistent with *Belton* and its rationales, but would establish a "readily applicable [standard] by the police in the context of the law enforcement activities in which they are engaged," *id.* at 458, and afford police the flexibility necessary in this context for effective and safe police work. See *Robbins* v. *California*, 453 U.S. 420, 431 (1981) (Powell, J., concurring in judgment) (*Belton* recognizes that "practical necessity requires that we allow an officer in these circumstances to secure thoroughly the automobile without requiring him in haste and under pressure to make close calculations about danger to himself or the vulnerability of evidence."); see also *Atwater* v. *City of Lago Vista*, 532 U.S. 318, 347 (2001) ("Often enough, the Fourth Amendment has to be applied on the spur (and in the heat) of the moment, and the object in implementing its command of reasonableness is to draw standards sufficiently clear and simple to be applied with a fair prospect of surviving judicial second-guessing months and years after an arrest or search is made.").[8]

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[8] In a similar vein, Professor LaFave, who has been "critical" of the bright-line rule established by *Belton* in general, 3 LaFave § 7.1(c) at 457, has observed that "it is at least debatable whether a line drawn in terms of whether the officer had previously 'signal[ed]' confrontation' or 'initiated contact' in some way provides a more workable test [than *Belton*] (as well as whether a

b. Second, *Belton* requires that the search of the vehicle be undertaken as "a contemporaneous incident of th[e] arrest." 453 U.S. at 460. As the District of Columbia Circuit has explained, a search generally meets the contemporaneous-incident standard whenever "it is an integral part of a lawful custodial arrest process," such that the search and arrest are fairly regarded as "one continuous event." *United States* v. *Abdul-Saboor*, 85 F.3d 664, 668, 669 (D.C. Cir. 1996). Like the "recent occupant" limit, *Belton*'s "contemporaneous incident" requirement affords the officer in the field flexibility to determine the most appropriate —and safe—manner in which to conduct a vehicle search under the circumstances at hand. In addition, just as is true for the "recent occupant" limitation, while there may be outlying cases in which it is debatable whether a vehicle search is a "contemporaneous incident" to an arrest, in the vast majority of cases that determination is straightforward.

Most courts have concluded that *Belton* does not authorize the search of a vehicle as a "contemporaneous incident" to the arrest of its recent occupant if the arrestee or his vehicle has been removed from the scene of the arrest before the search is conducted. See, *e.g.*, *United States* v. *Wells*, 347 F.3d 280, 287 (8th Cir. 2003); *United States* v. *Lugo*, 978 F.2d 631, 634-635 (10th Cir. 1992). That understanding is consistent with this Court's pre-*Belton* case law. See *Dyke* v. *Taylor Implement Mfg. Co.*, 391 U.S. 216, 220 (1968) (search of arrestee's car was "too remote in time or place to [be] incidental to the arrest," where search did not occur

premium should be placed on a driver's ability to exit the vehicle before such a signal or contact can be effectuated)." *Id.* § 7.1 at 119 (Supp. 2004).

until arrestee was in custody inside the courthouse and his car had been moved by police from the site of the arrest to the street outside the courthouse); *Preston*, 376 U.S. at 368 (search of arrestee's car was not incident to arrest when search was conducted after car had been towed to a garage).[9]

2. *Petitioner's Alternative "Reaching Distance" Argument Was Waived And, In Any Event, Is Unsound*

Petitioner alternatively argues (Br. 35) that, if this Court declines to adopt an initiation-of-contact limitation on *Belton*, "the Court should find that a person is a 'recent occupant' of a car only when that person, having just exited the car, remains within reaching distance of it at the time of his arrest." See *id.* at 10. The Court should not so find.

[9] After a vehicle has been removed from the scene of an arrest, a search of the vehicle may still be reasonable and thus lawful under the Fourth Amendment, even if the search would not be warranted as an incident to the arrest. See *United States* v. *Johns*, 469 U.S. 478, 487 (1985). This Court has recognized, for example, that the Fourth Amendment permits police to inventory the contents of impounded vehicles under standardized procedures at a time and place removed from an arrest. See *Colorado* v. *Bertine*, 479 U.S. 367, 371-372 (1987); *South Dakota* v. *Opperman*, 428 U.S. 364 (1976). Even when such standardized procedures are in place, however, the ability of police to conduct an inventory search once a vehicle is removed from the scene of the arrest of the vehicle's recent occupant does not address the officer-safety and destruction-of-evidence concerns that make it reasonable for police to search the vehicle contemporaneously with the arrest under *Belton*. In this case, the government argued that the search of petitioner's vehicle was also lawful as an inventory search. The court of appeals did not need to reach that question and it is not presented here. See J.A. 75; note 2, *supra*.

a. Petitioner's "reaching distance" argument was not raised below or in the petition for certiorari, and therefore has been waived. As discussed above, the "sole contention" that petitioner made in the court of appeals is that the search of his automobile was unlawful because Officer Nichols did not initiate contact with him "while [he] was still in his vehicle." J.A. 64-65. Petitioner conceded that, if Officer Nichols had initiated contact with petitioner while he "was still in his vehicle," then "following [petitioner's] arrest for having the narcotics, a subsequent search of [petitioner's] automobile's passenger compartment would have been reasonable and within the scope of *Belton*." Pet. C.A. Br. 13.

Furthermore, in his petition for certiorari, petitioner did not argue that *Belton* only applies if he was within "reaching distance" of his car at the time of his arrest. Instead, he limited his petition solely to the question whether "*Belton* is confined to situations in which the police initiate contact with the occupant of a vehicle while that person is in the vehicle." Pet. i; see Pet. 5-6. In his brief on the merits, petitioner attempts to expand the scope of the question on which this Court granted certiorari to include the alternative argument discussed above. Compare Pet. i, with Pet. Br. i. That belated effort to recast the question presented in the petition for certiorari, and challenge the search on the basis of an argument not pressed or considered below, is not permissible under this Court's rules, see Sup. Ct. R. 14.1(a), and is out of step with the Court's usual practice, see *Peralta* v. *Heights Med. Ctr., Inc.*, 485 U.S. 80, 86 (1988) (The Court's customary practice is to "deal with the case as it came here and affirm or reverse based on the ground relied on below.").

b. In any event, neither *Belton* nor the considerations on which it rests supports petitioner's alternative

argument that the search of a vehicle incident to the arrest of its recent occupant is not authorized under *Belton* unless the government can show that an individual who "has just gotten out of [a] car * * * is still within reaching distance of it at the time of arrest." Pet. Br. 10. Such a requirement is inconsistent with the "generalization" on which *Belton* rests, 453 U.S. at 460, and, if adopted, would all but eviscerate *Belton*'s bright-line rule.

As discussed above, in order "to establish the workable rule [that] this category of cases requires," the Court in *Belton* adopted the "generalization" that the "interior of an automobile" is always within the "immediate control" of an arrestee when "the arrestee is its recent occupant." 453 U.S. at 460 (quoting *Chimel*, 395 U.S. at 763). The Court emphasized that *Belton*'s rule, "while based upon the need to disarm and to discover evidence, does *not* depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found." *Id.* at 461 (quoting *Robinson*, 414 U.S. at 235; emphasis added). Thus, in *Belton*, the Court did not engage in any particularized examination of the record to determine whether Roger Belton was within "reaching distance" of the car that he had recently occupied at the time of his arrest. Rather, the Court presumed that the passenger compartment of the car was within Belton's "immediate control" because he "had been a passenger [of the car] just before he was arrested." *Id.* at 462; see also *Knowles*, 525 U.S. at 118; p. 13, *supra*.

Subjecting *Belton* to an after-the-fact, case-specific determination whether the recent occupant of a vehicle "is within reaching distance of the car when he was arrested" (Pet. Br. 11) is antithetical to the generalization that this Court drew in *Belton*, not to mention the

Court's emphasis that its ruling did not depend on case-by-case justifications as to the need for the search. Such a limitation on *Belton* would also all but eliminate *Belton*'s bright-line rule—and replace it with *Chimel*'s fact-specific analysis—any time the occupant of a vehicle is arrested after he exits his car (voluntarily or not), which, as discussed above, is the situation in the vast majority of arrests in which *Belton* applies. In other words, adopting petitioner's "reaching distance" requirement would put courts—and police officers—back into the uncertain and hazardous world that existed before *Belton*. See 453 U.S. at 459.

c. For the same reasons that petitioner's alternative argument is not properly before this Court and should be rejected, petitioner errs in suggesting that the court of appeals's decision is deficient because the record contains "no specific findings regarding [petitioner's] distance from the car when Officer Nichols arrested him." Pet. Br. 6; see *id.* at 8, 11, 12, 28-29, 36, 37. Petitioner did not challenge the application of *Belton*, or the legality of the search at issue, based on the lack of such findings in the courts below. More fundamentally, as discussed above, the applicability of *Belton* does not turn on such after-the-fact determinations, and this Court has never suggested that, in order to justify a *Belton* search, the government must prove the precise distance between a suspect and his vehicle at the time of arrest.

D. The Court Of Appeals Correctly Concluded That The Search Of Petitioner's Vehicle Was Valid Under *Belton*

1. Under *Belton*, the search of petitioner's vehicle was a lawful incident to petitioner's arrest. J.A. 73-74. First, at the time of his arrest, petitioner was a "recent occupant" of the vehicle. As explained above, the record "conclusively" establishes that Officer Nichols saw petitioner exit his vehicle and met him "*within moments*" in order to ask him why his vehicle did not match the registered vehicle. J.A. 74 (emphasis in original); see J.A. 42, 46. Thus, like Belton's jacket, petitioner's gun was located inside the passenger compartment of the car that he had occupied "just before he was arrested." *Belton*, 453 U.S. at 462. Second, Officer Nichols searched petitioner's car as "a contemporaneous incident" to petitioner's arrest. *Id.* at 460. Officer Nichols arrested petitioner, put him in his patrol car, and searched petitioner's car as part of one continuous event. J.A. 74. Accordingly, the search at issue falls within *Belton*'s bright-line rule.

2. As the court of appeals noted, petitioner did not challenge the applicability of *Belton* on the ground that he was handcuffed and in the patrol car at the time that his car was searched. See J.A. 74-75 n.2 ("We also note that circuit precedent, *which [petitioner] does not challenge*, permitted Officer Nichols to separate [petitioner] from the vehicle (in this case by handcuffing him and placing him in the patrol car) prior to the search.") (emphasis added). Rather, petitioner acknowledged that "[t]he search of an automobile is generally reasonable even if the defendant has already been removed from the automobile to be searched and is under the control of the officer." Pet. C.A. Br. 12. Accordingly, that issue is not presented here.

In any event, the fact that petitioner was secured in the patrol car at the time of the search does not render *Belton* inapplicable. *Belton* applies only to individuals who are under custodial arrest. In other words, by definition, in cases covered by *Belton*, the liberty of the recent occupant has already been substantially restrained by the time of the search. It is standard

practice for police officers to handcuff an arrestee and put him in a patrol car before conducting a *Belton* search. Thus, lower courts across the country have routinely and virtually unanimously applied *Belton* to situations in which the recent occupant of a car was arrested, handcuffed, and placed in a squad car before his vehicle was searched.[10] The practice of restraining an arrestee on the scene before searching a car that he just occupied is so prevalent that holding that *Belton* does not apply in that setting would, as one court observed, "largely render *Belton* a dead letter." *United States* v. *Wesley*, 293 F.3d 541, 548 (D.C. Cir. 2002).

[10] See, *e.g.*, J.A. 74-75 n.2 (citing *United States* v. *Milton*, 52 F.3d 78, 80 (4th Cir.), cert. denied, 516 U.S. 884 (1995)); *United States* v. *Wesley*, 293 F.3d 541, 545-549 & n.8 (D.C. Cir. 2002) (citing cases); *United States* v. *Humphrey*, 208 F.3d 1190, 1202 (10th Cir. 2000); *United States* v. *McLaughlin*, 170 F.3d 889, 890, 891-892 (9th Cir. 1999); *United States* v. *Sholola*, 124 F.3d 803, 817-818 & n.15 (7th Cir. 1997) (citing cases); *Conrod* v. *Davis*, 120 F.3d 92, 94 (8th Cir. 1997), cert. denied, 523 U.S. 1081 (1998); *United States* v. *Mitchell*, 82 F.3d 146, 152 (7th Cir.), cert. denied, 519 U.S. 856 (1996); *United States* v. *Moorehead*, 57 F.3d 875, 877 (9th Cir. 1995); *United States* v. *Doward*, 41 F.3d 789, 791 (1st Cir. 1994) (citing cases), cert. denied, 514 U.S. 1074 (1995); *United States* v. *Riedesel*, 987 F.2d 1383, 1386, 1388 (8th Cir. 1993); *United States* v. *White*, 871 F.2d 41, 44 (6th Cir. 1989); *United States* v. *Karlin*, 852 F.2d 968, 970-971 (7th Cir. 1988), cert. denied, 489 U.S. 1021 (1989); *People* v. *Daverin*, 967 P.2d 629, 631, 632 (Colo. 1998); *State* v. *Harvill*, 963 P.2d 1157, 1158 (Idaho 1998); *People* v. *Bailey*, 639 N.E.2d 1278, 1281-1282 (Ill. 1994), cert. denied, 513 U.S. 1157 (1995); *United States* v. *Valiant*, 873 F.2d 205, 206 (8th Cir.), cert. denied, 493 U.S. 837 (1989); *State* v. *Hensel*, 417 N.W.2d 849, 852-853 (N.D. 1988); *State* v. *Stroud*, 720 P.2d 436, 438 (Wash. 1986); *State* v. *Fry*, 388 N.W.2d 565, 567 (Wis.), cert. denied, 479 U.S. 989 (1986); see also 2 Wayne R. LaFave et al., *Criminal Procedure* § 3.7(a) at 203 & n.14 (2d ed. 1999) ("[A] search of a vehicle under *Belton* is permissible even after the defendant has been removed from the car, handcuffed and placed in a squad car.") (citing cases).

The ingrained police practice fully comports with *Belton*. In *Belton*, this Court rejected the proposition —advanced by the state court in *Belton* and the dissenters in that case—that, "[w]hen the arrest has been consummated and the arrestee safely taken into custody, the justifications [for a warrantless search] cease to apply," because "at that point there is no possibility that the arrestee could reach weapons or contraband." 453 U.S. at 465-466 (Brennan, J., joined by Marshall, J., dissenting). Thus, as Justice Brennan emphasized in his dissenting opinion, the rationale of *Belton* squarely applies even after a recent occupant has been handcuffed and put in a squad car. See *id.* at 468 ("Under the approach taken today, the result would presumably be the same even if Officer Nicot had handcuffed Belton and his companions in the patrol car before placing them under arrest."); see also *Wesley*, 293 F.3d at 548 ("The dissenters in *Belton* understood the case to establish a flat rule, applicable regardless of the status of the defendants at the time of the search.").[11]

[11] Two of the lower court cases that the Court pointed to in *Belton* to illustrate the need for a "straightforward rule" governing "the proper scope of a search of the interior of an automobile incident to a lawful custodial arrest of its occupants," 453 U.S. at 459 & n.1—*Hinkel* v. *Anchorage*, 618 P.2d 1069, 1069-1070 (Alaska 1980), cert. denied, 450 U.S. 1032 (1981), and *Ulesky* v. *State*, 379 So. 2d 121, 123 (Fla. Dist. Ct. App. 1979)—involved situations in which the arrestee was in the back of the patrol car at the time that the vehicle was searched. Applying *Chimel* v. *California*, *supra*, the court of appeals in *Ulesky* reasoned that "once appellant was placed in the patrol car and thereby separated from her purse [in the vehicle], neither of the justifications for the search incident to arrest exception were present." 379 So. 2d at 126. As the dissenters in *Belton* recognized (453 U.S. at 468), that reasoning,

Furthermore, at least as long as the arrestee remains at the scene of the arrest, the rationales underlying the search-incident-to-arrest doctrine are potentially implicated. Even after individuals are taken into custody, they continue to pose a grave threat to law enforcement personnel. See, *e.g.*, *Plakas* v. *Drinski*, 19 F.3d 1143, 1145 (7th Cir.) (suspect handcuffed in backseat of squad car escaped from squad car and later confronted police), cert. denied, 513 U.S. 820 (1994); *United States* v. *Sanders*, 994 F.2d 200, 210 & n.60 (5th Cir.) (citing incidents in which police officers were slain by handcuffed arrestees), cert. denied, 510 U.S. 955 (1993); *Forge* v. *City of Dallas*, No. 3-03-CV-0256-D, 2003 WL 21149437, at *1 (N.D. Tex. May 19, 2003) (arrestee who was handcuffed and secured with a seatbelt in a locked patrol car "suddenly and without warning * * * slipped out of his handcuffs, released the seat belt latch, opened the locked car door, and tried to escape from custody"); see also *United States* v. *Doward*, 41 F.3d 789, 793 n.5 (1st Cir. 1994) (discussing "the unpredictable developments ultimately confronting" police in *Belton* context, including the possibility that bystanders or unknown confederates in the area may approach the vehicle), cert. denied, 514 U.S. 1074 (1995); see also *id.* at 791-793 & n.1.[12] In addition, as long as a vehicle remains at the

while arguably consistent with *Chimel*'s case-specific analysis, is out of step with the generalization made by the Court in *Belton* in order to provide officers in the field with a "single familiar standard" in this critical context. *Id.* at 458.

[12] In 2001, two officers were killed and 7343 were assaulted while in the process of handling, transporting, or maintaining the custody of prisoners. *Uniform Crime Reports* 32, 93 (2001). In addition, on September 28, 2001, a police officer was killed by a suspect who managed to free himself from his handcuffs, retrieve a handgun, and shoot the officer. *Id.* at 49; see also *Uniform Crime Reports* 49 (1998) (On May 19, 1998, two police officers were killed when a handcuffed suspect in the back seat of their patrol car managed to free himself, retrieve one of the officer's guns, and mortally wound both officers.); *id.* at 50 (officer killed on January 12, 1998, by individual who had been ordered out of his car, when the individual managed to free himself, retrieve a rifle from his car, and mortally wound the officer).

scene of arrest, known or unknown confederates of the arrestee may seek to gain access to weapons or evidence that may be inside the vehicle.

The bright-line *Belton* rule permits officers to protect themselves against the small but nevertheless potentially deadly risk that even after an arrestee is handcuffed and in the squad car, it is possible that a weapon inside the arrestee's car may be used against the officer while the car remains at the scene of the arrest or that evidence inside the car may be retrieved or destroyed. Especially where, as here, an arrest is conducted by a police officer on duty by himself, such protective and reasonable measures may be vital. And, as one court of appeals observed in a similar vein, "it does not make sense to prescribe a constitutional test that is entirely at odds with safe and sensible police procedures." *United States* v. *Mitchell*, 82 F.3d 146, 152 (7th Cir.), cert. denied, 519 U.S. 856 (1996). That is particularly true where, as here, the procedures have been utilized by police across the nation for decades and thus have become accepted as a standard practice.

Accordingly, although the issue is not presented by this case, the fact that petitioner was restrained and in Officer Nichols's patrol car at the time of the search nonetheless provides no basis for second-guessing the application of *Belton* either.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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